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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 16/ सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT:
(In Jail)

Baisakhu, S/o Sanku Ram,
Age - 50 years,
Occupation – Cultivator,
R/o Mereganwa,
P.S. Durgu Kondal,
Distt. Kanker.

- Versus -

RESPONDENT: State of Chhattisgarh

{Criminal appeal under Section 374 (2) Cr.P.C. 1973}

Division Bench:

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Sunil Kumar Sinha, JJ.

25-10-2007

Mr. Surya Kant Mishra, counsel for the appellant.

Mr. Sudhir Bajpai, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on Dais.

Sunil Kumar Sinha, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 9-11-2001 passed by the Additional Sessions Judge, Kanker, in Sessions Trial No.272/2001, whereby the appellant has been convicted under Section 302 of the I.P.C. and sentenced to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for three months.

Facts, in brief, are that the deceased namely, Baisuram was real brother of appellant Baisakhu. Both were residing in a house. On the fateful day i.e. on 10-1-2001, at about 4 p.m. some quarrel started between the two brothers on account of keeping of tiles in a particular room in the house. During the quarrel,

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आदेश पत्रक (पूर्वानुबद्ध)

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both the brothers were throwing each other on the ground. Seeing this, wife of the deceased namely, Dasri Bai (PW-4) went to the house of Darbari (PW-1) who was her brother-in-law and narrated the story to him. Darbari immediately rushed to the house of the deceased along with Dasri Bai, but by that time, the deceased already died. They saw injury on the head of the deceased. The accused was sitting near the dead body. Other villagers were called. The matter was reported to the Police Station on the next day by Darbari (PW-1) and the first information report (Ex.P-1) was registered.

The Investigating Officer left for the place of occurrence, gave notice (Ex. P-2) to the Panchas and prepared inquest (Ex.P-3) on the body of the deceased. Bloodstained & plain soils were seized from the place of occurrence under Ex.P-4. After taking the accused/appellant into custody, his memorandum was recorded under Ex.P-5 and one club was seized in pursuance of the said memorandum under Ex.P-6. Site plan was prepared by the Halka Patwari under Ex.P-7A. Another site plan Ex.P-8 was prepared by the Investigating Officer. Dead body of the deceased was sent for post-mortem examination to Primary Health Centre, Durgukondal under Ex.P-9A. Post-mortem on the body of the deceased was conducted by Dr. (Smt.) P. Lal (PW-5) who prepared her report under Ex.P-9. She noticed following injuries on the body of the deceased: -

1. One lacerated wound on right side of head just above the right ear in the size of 3 cms. x 3 cms. x 6 cms. Clotted blood was present over the injury. Fracture of underlying bone was also seen.
2. One punctured wound in the size of 1 cm. x 0.5 cm. x 3 cms. just above the right eye on the temporal region.

The doctor opined that injury No.1 could be caused by hard & rough object. In internal examination, it was found that there was a fracture of right

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आदेश पत्रक (पूर्वानुबद्ध)

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parietal & occipital bone with extra-dural haemorrhage and haemotoma. Blakish blood was present. Entire area of injury was 4 cms. x 4 cms. x 6 cms. No other internal injury was found. According to the post-mortem report, mode of death was coma due to head injury and death was homicidal in nature.

After completion of usual investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Bhanupratappur who in turn committed the case to the Court of Sessions Judge, Kanker, from where it was received on transfer by the Additional Sessions Judge, Kanker, who conducted trial and convicted & sentenced the accused/appellant as aforementioned.

We have heard learned counsel for the parties.

Learned counsel for the appellant has not disputed the homicidal death of the deceased. Moreover, it comes in the evidence of Dasri Bai (PW-4) that when the two brothers started quarrelling, she went to the house of Darbari (PW-1) and narrated the story. When both of them returned back, they saw that the dead body of the deceased was lying in the house and the appellant was sitting near the dead body. They also found injury on the body of the deceased. This evidence finds support from the evidence of Dr. (Smt.) P. Lal (PW-5) who conducted post-mortem on the body of the deceased and noticed the above injuries. She gave her opinion that mode of death was coma due to head injury and the same was homicidal in nature. Therefore, on the basis of above ocular and medical evidence, it is established that the death of the deceased was homicidal in nature.

So far as complicity of the accused/appellant in the crime in question is concerned, it comes in the evidence of Dasri Bai (PW-4) that on the fateful day

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आदेश पत्रक (पूर्वानुबद्ध)

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some quarrel on account of keeping tiles in the house began between the two brothers. Her husband (since deceased) was keeping tiles in a particular place in the house which was opposed by the appellant and on this, both the brothers started quarrelling. Looking to this, she immediately went to the house of her brother-in-law Darbari (PW-1), narrated the story to him and asked him to come to her house. Thereafter, she returned to her house along with Darbari. When they came to the house, they saw that the deceased was already dead by that time and they also saw injury on the head of the deceased. The accused/ appellant was sitting there and one club (Kotela) was also lying there. In cross-examination, she has admitted that she had not seen the accused assaulting the deceased.

Other witness is PW-1 namely, Darbari. He has stated in his evidence that on the fateful day at about 4 p.m. Dasri Bai (PW-4) came to him and told about the quarrel between the two brothers and she asked him to come to her house. When he reached to the house of the deceased, he saw that the deceased was already dead by that time. He saw injury on the head of the deceased. Brain matter was coming out from the head injury. In para 2 of his examination, he says that Dasri Bai (PW-4) told her that the accused has assaulted the deceased with club. Thereafter, village Patel Panduram, Sarpanch Dashrath etc. were called and then the report was lodged by him in Police Station: Durgkondal vide Ex.P-1. In cross-examination, he has admitted that both the brothers were residing together and there was no previous dispute in between the two brothers. He has further stated that he does not know as to what was the reason for quarrel, on the fateful day.

Therefore, from the evidence of these two witnesses (PW-1 & PW-4) it transpires that the quarrel began between the two brothers on account of

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आदेश पत्रक (पूर्वानुबद्ध)

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~~keeping tiles at a particular place in the house, when wife of the deceased~~ saw that some untoward incident may take place, she immediately rushed to the house of Darbari (PW-1) and by the time both could return to the house, the deceased has already died and the appellant was sitting in the house. It is clear from the above evidence that Dasri Bai (PW-4) had seen quarrel between the two brothers and when she returned back along with Darbari (PW-1), she saw that one of the brothers was dead having injury on his head and another was sitting there. There were no other inmates of the house, no explanation was given by the accused, the accused was keeping mum and was sitting near the dead body. This conduct of the accused along with evidence of Dasri Bai (PW-4) shows complicity of the accused/appellant in the crime in question.

Learned counsel for the appellant argues that looking to the background of quarrel and further looking to the other circumstances, offence alleged against the accused/appellant would not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, this argument is opposed by learned counsel for the State/respondent.

To appreciate this argument, we have carefully perused the records of the case. In the first information report (Ex.P-1) it comes that when quarrel began between the two brothers, both were throwing each other on the ground and at that spur of moment, wife of the deceased namely, Dasri Bai (PW-4) went to call Darbari (PW-1) who happens to be her brother-in-law. But as soon as they reached to the spot, the deceased was dead. They saw that he had sustained two head injuries. Therefore, it is clear that when the quarrel begun, the accused/ appellant was unarmed, the quarrel has begun on account of a petty matter which was regarding keeping tiles at a particular place in the common house where both the brothers were residing and it appears that in the

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spur of moment in the quarrel, the appellant, who was unarmed, picked up a club, which must be lying there, and gave one blow on the head of the deceased. According to the doctor, there were two injuries and the fatal injury was the first injury which was caused on the head of the deceased resulting into fracture of occipital & parietal bones, another injury was a simple punctured wound and there was no corresponding internal injury to that wound. The case of the prosecution is that some scuffle was going on between the two brothers and both were throwing each other on the ground, therefore, there was possibility that the second injury might have been caused during the said scuffle which was not having any corresponding internal injury. Therefore, it is clear that during the course of quarrel the appellant gave only one fatal blow on the head of the deceased by picking up a club which resulted into fracture of occipital & parietal bones and the deceased succumbed to the injury sustained by him. Hence, it can be safely held that the appellant was having no intention to cause the death of the deceased, but certainly, looking to the nature of injury sustained by the deceased, the appellant was having knowledge that the injury caused by him may be fatal to the life of the deceased. In the circumstances, in our considered opinion, act of the appellant shall be covered under Section 304 Part-II of the I.P.C. and for that he shall be liable to be punished.

In the result, the appeal is partly allowed. Conviction & sentences awarded to the appellant under Section 302 of the I.P.C. are set aside, instead, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for seven years. The appellant shall be entitled for set off of the period already undergone by him.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

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